

Remarks/Comments

Claims 14-41 are pending in the present application. Claims 14, 16, 18, 20, 21, 23, 25, 27, 29, 31 and 33-40 are withdrawn from consideration. Claims 15, 19, 22, 24, 26, 30, and 32 are rejected under 35 U.S.C. 102(e) as being unpatentable over Jackman (US 6,352,998), or in the alternative under 35 U.S.C. 103 as being obvious over Jackman (US 6,352,998) in view of Henney (Abstract). Claims 17, 28, and 41 are rejected under 35 U.S.C. 103 as being unpatentable over Jackman (US 6,352,998) in view of Eugley (US 4,324,811) and Katzev (US 5,002,760). Claim 28 is rejected under 35 U.S.C. 103 as being unpatentable over Jackman (US 6,352,998) in view of Jones et al (US 4,963,555).

Applicants have hereby amended claim 15 to describe more specifically that the composition is in the form of an ointment containing water in an amount of from 0 to about 10% by weight based on the total weight of the composition. Support for this amendment is found on page 8, lines 4-9 of the present specification. It is submitted that no new matter has been added by the present amendment. Applicants respectfully request reconsideration of the application and allowance of the claims in view of the foregoing amendments and following remarks.

Claims 15, 19, 22, 24, 26, 30, and 32 are rejected under 35 U.S.C. 102(e) as being unpatentable over Jackman (US 6,352,998), or in the alternative under 35 U.S.C. 103 as being obvious over Jackman (US 6,352,998) in view of Henney (Abstract). As currently amended, claim 15 now recites that the composition is in the form of an ointment containing water in an amount of from 0 to about 10% by weight based on the total weight of the composition. Jackman does not teach nor fairly suggest a composition in the form of an **ointment** for topical administration comprising 33-epi-chloro-33-desoxy-ascomycin and a carrier vehicle which comprises i) means to retain water in the outer skin layer, ii) means to hinder water evaporating from the skin, wherein the composition further comprises water in an amount of from 0 to about 10% by weight based on the total weight of the composition. Jackman discloses **emulsions**, particularly oil-in-water emulsions, of 33-epi-chloro-33-desoxy-ascomycin. Specifically, 26 of the 30 Examples presented in Jackman comprise, at a minimum, 38.99% water (Examples 5, 6 and 7) up to as much as 96.4% water (Example 28). In contrast, the present claims limit the amount of water in the composition to 0 up to about 10%.

It is acknowledged that Jackman discloses 4 examples which contain no water, e.g. Examples 21, 24, 25 and 29. However, none of these examples contains a means to retain water in the outer skin layer, a feature specifically set forth in independent claim 15. Thus, Jackman does not contemplate the present invention as now claimed. There is no teaching nor suggestion of a composition in

ointment form comprising 33-epi-chloro-33-desoxy-ascomycin, a carrier vehicle comprising means to retain water in the outer skin layer and means to hinder water evaporating from the skin, and 0 to 10% water as required by the present claims. Thus Jackman does not anticipate, nor make obvious the composition of claims 15, 19, 22, 24, 26, 30 and 32. Henney does not compensate for the deficiency of Jackman.


Claims 17, 28, and 41 are rejected under 35 U.S.C 103 as being unpatentable over Jackman (US 6,352,998) in view of Eugley (US 4,324,811) and Katzev (US 5,002,760). However, for the reasons stated above, Jackman does not teach nor fairly suggest the composition as now claimed, and neither Eugley nor Katzev compensate for the deficiency of Jackman.

Claim 28 is rejected under 35 U.S.C. 103 as being unpatentable over Jackman (US 6,352,998) in view of Jones et al (US 4,963,555). Again, however, for the reasons stated above, Jackman does not teach nor fairly suggest the composition as now claimed, and Jones et al. do not compensate for the deficiency of Jackman.

In view of the foregoing, it is respectfully submitted that the instant claims are patentable over the art of record. An early notice to that effect is earnestly solicited.

Respectfully submitted,

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